Supreme Court, U. S.
FILED
JUN 25 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1979

NO. 79-2074

MELBA TILL ALLEN, Petitioner

v.

STATE OF ALABAMA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

RICHARD D. HORNE
301 St. Joseph Street
P. O. Box 1706
Mobile, Alabama 36601
1-205-432-4546

Counsel for Petitioner

June 24, 1980

INDEX

Page

Opinion Below.....1

Jurisdiction.....1

Question Presented.....2

Statutory Provisions Involved.....3

State of the Case.....4

Reason for Granting the Writ.....

1. The decision below conflicts with other decisions of this Court with regard to what constitutes due process under the 5th and 14th Amendments to the Constitution of the United States in that §36-25-1, Code of Alabama (1975) is unconstitutional as written and as applied.....10

Conclusion.....15

Certificate of Service.....16

Appendix

A. Opinion of Court of Criminal Appeals.....Exhibit 1

B. Code of Ethics, §36-25-1, Code of Alabama, 1975,.....Exhibit 2

CITATIONS

Cases: Page

Boddie v. Connecticut.....13
401 U.S. 371 (1971)

Giaccio v. State of Pennsylvania....14
382 U.S. 399 (1966)

CITATIONS continued

Case: Page

Service v. Dulles.....12
354 U.S. 363 (1957)

Vitarelli v. Scaton,.....12
359 U.S. 535 (1959)

Statutes:

28 U.S.C. 1257(3).....2

Code of Alabama

§36-25-1.....2, 3, 8, 10

§36-25-5(14).....11

§15-5-3.....8, 10, 13

Regulation 19.....8, 9, 11
Act 1056

United States Constitution

Fifth Amendment.....2, 3, 4, 10

Fourteenth Amendment.....2, 4, 10

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

NO._____

MELBA TILL ALLEN, Petitioner

v.

STATE OF ALABAMA, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
ALABAMA COURT OF CRIMINAL APPEALS

The Petitioner Melba Till Allen respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Alabama Court of Criminal Appeals entered in this proceeding on December 18, 1979.

OPINION BELOW

The opinion of the Alabama Court of Criminal Appeals, not yet reported, appears in the Appendix hereto as Exhibit 1. No opinion was rendered by the Alabama Supreme Court in denying certiorari.

JURISDICTION

The judgment of the Alabama Court of

Criminal Appeals was entered on December 18, 1979. A timely application for rehearing before that Court was denied on January 22, 1980, and a timely petition for a writ of certiorari was filed with the Alabama Supreme Court. That petition was denied on March 28, 1980, and this petition for certiorari was within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 USC 1257 (3).

QUESTIONS PRESENTED

1. Whether petitioner's right to due process under the 5th and 14th Amendments was violated by the cumulative acts of the Alabama Ethics Commission and acts of the Montgomery County District Attorney. Petitioner asserts that the investigation of petitioner during the fall of 1977 and her subsequent indictment and trial were without the requisite procedural safeguards so that her conviction is unconstitutional. Petitioner further asserts that §36-25-1, Code of Alabama (1975) (hereinafter Ethics Law) is unconstitutional as written and applied.

STATUTORY PROVISIONS INVOLVED

A. Code of Ethics for Public Officials, Employees, Etc., §36-25-1, Code of Alabama (1975 Act 130 of the Alabama Legislature [1975]):

The full text of the Act is set out in the Appendix hereto as Exhibit 2.

B. 5th Amendment to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

C. 14th Amendment to the Constitution of the United States:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, and subject citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

During the summer and fall of 1977, there began a series of events which captured the interest of the entire state. Prompted by an anonymous letter the Alabama State Ethics Commission began an investigation of State Treasurer Mrs. Melba Till Allen which drove a then rollicking political campaign to Section B of the state's newspapers.

This investigation culminated in a press conference of December 1, 1977, at which time those allegations of the commission report not already disclosed became "public".

Despite the fact that the Commission had used the Montgomery County Grand Jury's subpoena power to compel certain banks to turn over their records, Mr. Jimmy Evans, District Attorney for Montgomery County, had a subpoena served on the Commission some twenty minutes after the report was issued.

At that point, the District Attorney took over and the Grand Jury proceedings, with the publicity rivaling that of the Ethics Commission, returned the five indictments of which the instant case is but one.

Following arraignment special pleas were filed, which, among several, listed as grounds the vagueness, overbreath, and unconstitutionality of Act 130 of the Legislature (1975). Said pleas were denied.

The five indictments charged were:

(1) CC-78-319 - Use or benefit of a private plane belonging to Ed

Gregory in return for depositing state funds in banks in which he had an interest.

(2) CC-78-320 - Two counts charging placing state funds in the American National Bank of Geneva, Alabama, in return for personal loans or benefit.

(3) CC-78-321 - Placing of state funds in banks in which Mr. Frank Merrifield had an interest in return for a personal loan or benefit from Mr. Merrifield or his banks.

(4) CC-78-322 - Receiving a sum of money or other value for placing state funds in the American National Bank of Geneva, Alabama.

(5) CC-78-402 - Failure to disclose financial interests as mandated by the Ethics Law.

The Petitioner had been tried earlier in Case CC-78-320 and convicted and that case is presently before this Court on a Petition for Certiorari. Several weeks later the Petitioner was put to trial on CC-78-402 which is the subject of this Petition. Testimony at trial revolved around the degree to which Petitioner com-

plied or failed to comply with the requirements of a questionaire mailed to all public officials within the State of Alabama, whose incomes were in excess of $15,000.00.

Melvin G. Cooper, Executive Director of the Alabama State Ethics Commission, testified with regard to forms and correspondence supplied the Commission by Petitioner. He then testified that there was no requirement law for a corporation to file a statement of economic interests with the Ethics Commission. On September 23, 1977, Mr. Cooper wrote the Petitioner requesting additional information (T-104) and the letter was introduced as State's Exhibit #5. See Appendix A, page 17.

Petitioner replied in a letter dated September 26, 1977 (See Appendix A, page 17). Petitioner followed with another letter dated October 6, 1977, which is found in Appendix 1, pages 18 and 19. Petitioner followed that with a letter to Mr. Cooper giving him blanket authorization to reviw each and every banking record she might have in every bank in the state of Alabama.

Additional evidence was offered by both the State and petitioner and on June 25, 1978, petitioner was found guilty and sentenced to one year in the penitentiary.

On September 1, 1978, a hearing was held on a Motion for a New Trial based upon evidence discovered pursuant to Petitioner's Motion for discovery on cases CC-78-320 and CC-78-402.

Upon hearing, Petitioner presented testimony of Alto V. Lee who was chairman of the State Ethics Commission during the investigation of Mrs. Allen.

His testimony revealed that the Ethics law (Act 130 1975 Legislature) was an amendment of Act 1056 passed in 1973

Testimony revealed that §16(g) of the original Act (1973) contained the following language:

> "The Commission shall prepare and publish, prior to the implementation of this act, procedures for review or appeal of any action taken against or in regard to any person covered in this act."

Such language was contained in §15(c) of the 1975 Act as well. However, on August 30, 1974, the Commission adopted Regulation 19 and mandated by

§16(g) of the 1973 Act. Such was not the case with the 1975 Act, for the testimony revealed that no implementation of §15(c) of the 1975 Act was made until Feburary 3, 1978, when the Commission adopted Regulation 19 of the 1973 Act. From the date of passage of the 1975 Act until February 3, 1978 meeting there was no procedure for review of complaint. This would include that period (September 19, 1977 through December 1, 1977) when the Commission investigated Mrs. Allen.

At the close of the hearing the motion for a new trial was denied as to all grounds.

A hearing on the motion for rehearing of the denial of motion for new trial was held on October 31, 1978. There testimony was presented from Mr. Melvin G. Cooper of the State Ethics Commission.

Mr. Cooper testified that neither he nor any member of the Commission delivererd any material received by the Commission to Mrs. Allen. He further testified that there was never any hearing, formal or informal, under any Regulation 19 for Mrs. Allen. The motion was denied.

REASON FOR GRANTING THE WRIT

The decision below conflicts with other decisions of this Court with regard to what constitutes due process under the 5th and 14th Amendments to the Constitution of the United States in that §36-25-1 Code of Alabama (1975) is unconstitutional as written and as applied.

In both the Demurrer and Motion to Dismiss filed prior to trial the petitioner asserted that the statute under which she was being prosecuted was unconstitutional. Those pleas properly put before the Court the question of unconstitutionality. Certain evidence was presented on the question which will be addressed in other argument.

However, on petitioner's motion for a new trial, other grounds were raised which showed the statute was unconstitutional in that it was never properly implemented. While a motion for a new trial may not have been the proper characterization for this motion the Court may disregard the caption and consider the substance of the motion. (See §15-15-3, Code of Alabama, 1975):

"In criminal proceedings, a plea is to be determined according to its substance and not by its commencement or conclusion."

The testimony of Mr. Alto V. Lee revealed that the 1975 Ethics Law was an amended version of the 1973 Act. The 1973 Act andated that due process procedures be implemented and on August 30, 1974 they were. This became Regulation 19. The 1975 Act contained the same mandate in §15(c). However, no action was taken by the Commission to implement §15(c) of the 1975 Act until February 3, 1978, when the Commission adopted Regulation 19 of the 1973 Act.

The question before this Court is whether Mrs. Allen could be prosecuted under this statute when a condition precedent to its implementation had never taken place?

Neither Regulation 19 of the old Act nor any similar regulation was implemented in the 1975 version until February 18, 1978, some three months after the Ethics Commission concluded its investigation. This is in spite of the mandate of §36-25-5(14):

"In all matters that come before

> the Commission concering a complaint on an individual, the laws of due process shall be strictly adhered to."

The Court of Criminal Appeals' decision is in conflict with Vitarelli v. Scaton, 359 U.S. 535 (1959) where this Court found that where an administrative agency failed to follow its own rules and regulations the dismissal of an employee was illegal. See also, Service v. Dulles, 354 U.S. 363 (1957).

This lack of any procedure may well account for the cavalier way the investigation was conducted.

Mr. Cooper, as Executor Director of the Commission testified in post trial hearings that there was never any hearing involving Mrs. Allen either formal or informal. Nor did she ever receive any materal from the Commission about the charges against her. This evidence certainly flies in the face of any claim by the Commission that they afforded her the requisite due process.

By Demurrer and Motion to Dismiss the petitioner questioned the constitutional-

ity of the statute under which she was tried. While the hearing styled Motion for A New Trial or Motion for A Rehearing may have been more properly characterized as a Motion in Arrest of Judgment or Writ of Error the Court has authority to disregard the caption and proceed on the merits, §15-15-3, Code of Alabama, 1975 (supra).

There can be no question but that Mrs. Allen had fundamental liberty and property rights at stake in their investigation. Her job and freedom were both in jeopardy. As proof, she is now without a job and on appeal from a one year sentence in the penitentiary.

Due Process has been defined as requiring:

> "That deprivation of life, liberty, or property by adjudication be preceeded by notice and an opportunity for hearing appropriate to the nature of the case."

Boddie v. Connecticut, 401 U.S. 371(1971)

Put another way:

> "Both liberty and property are specifically protected by 14th Amendment against any state deprivation which does not meet standards of due process,

> and such protection is not to be avoided by a simple label that a state chooses to fasten upon its conduct or its statute."

Giaccio v. State of Pennsylvania, 382 U.S. 399 (1966)

In the state case there were no procedures as evidenced by the Commission's bootstrap action of February 3, 1978. Therefore, whatever vague notions may have controlled the investigation, they existed only in the mind of the Commission.

The decision below failed to address the question of the lack of due process during the Ethics Commission hearing.

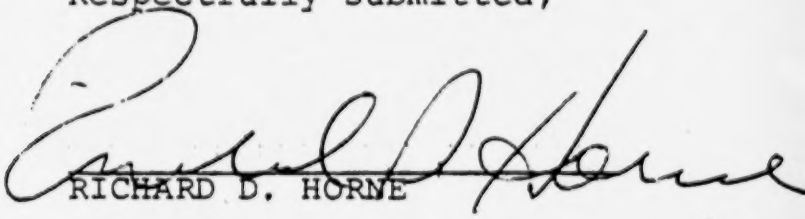
Can this Court or anyone perceive that the peititoner was afforded due process when she was never given a hearing, she never could confront her accusers, nor could she view the evidence against her. Nor could she view the evidence against her for it was subpoenaed just twenty minutes after the Ethics Commission awarded its decision.

This fundamental deprivation taints their entire proceeding and gives this Court ample grounds for granting this writ.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Alabama Court of Criminal Appeals.

Respectfully submitted,



RICHARD D. HORNE

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of June, 1980, deposited three (3) printed copies of this petition and appendixes to the Honorable Charles Graddick, Attorney General of Alabama, Montgomery, Alabama and one (1) copy to Ms. Molly Jordan, Clerk of the Alabama Court of Criminal Appeals and forty (40) printed copies to the Clerk of the Supreme Court of the United States for service this date.

Richard D. Horne

RICHARD D. HORNE
Attorney for Petitioner
301 St. Joseph Street
P. O. Box 1706
Mobile, Alabama 36601

(APPENDIX A)

THE STATE OF ALABAMA-JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1979-80

3 Div. 931

Melba Till Allen
v.
State

Appeal from Montgomery Circuit Court

HARRIS, PRESIDING JUDGE

Appellant was convicted of violating the Alabama Code of Ethics for Public Officials pursuant to the provisions of Section 36-25-1, et seq. Code of 1975, as last amended, being Act 130, Regular Session, 1975. She was sentenced to one year in the penitentiary which sentence was to run concurrently with the three year sentence imposed upon her in a previous conviction under another specific provision of the Ethics Statute. That

conviction was affirmed by this court on November 20, 1979.

Omitting the formal parts, the indictment reads as follows:

"The Grand Jury of said County charge that, before the finding of this indictment, Melba Till Allen, whose name is to the Grand Jury otherwise unknown, on or about to-wit: the 2nd day of May, 1977 in a statement of economic interests required to be filed by the said Melba Till Allen with the Alabama State Ethics Commission on a form provided by the said State Ethics Commission, pursuant to the provisions of Act 130, Regular Session of the Legislature of Alabama, 1975, did feloniously fail to list her indebtedness to banks operating or doing business in the State of Alabama in that, to-wit: the said Melba Till Allen did swear or affirm that as of December 31, 1976 she was indebted to nine (9) such banks for amounts less than Twenty-Five Thousand and no/100 ($25,000.00) Dollars and that she was indebted to one (1) such bank in an amount exceeding Twenty-Five Thousand and no/100 ($25,000.00) Dollars but less than Fifty Thousand and no/100 ($50,000.00) Dollars, and that she was indebted to one (1) such bank in an amount exceeding Fifty Thousand and no/100 ($50,000.00) Dollars but less than One Hundred Thousand and no/100 ($100,000.00) Dollars and that she was indebted to one (1) such bank in an amount of One Hundred Thousand and no/100 ($100,000.00) Dollars or more, when, as of December 31, 1976, the said Melba Till Allen was indebted to such banks in amounts as follows, to-wit:

BANK	OUTSTANDING INDEBTEDNESS AS OF DECEMBER 31, 1976
Alabama City Bank of Gadsden	$ 10,000.00
Alabama National Bank of Montgomery	47,963.00
Auburn Bank and Trust Company	7,329.63
Bank of Huntsville	5,180.41
Bank of the Southeast	50,000.00
Brent Banking Company	10,060.25
Cahaba Bank and Trust Company, Inc.	8,682.01
Central Bank of Birmingham	11,904.48
Central Bank of Montgomery	15,000.00
Central Bank of Uniontown	70,000.00
Cherokee County Bank	7,814.00
Citibanc of Alabama/Fultondale	15,000.00
First National Bank of Greenville	2,412.09
The Citizens Bank, Oneonta	59,000.00
The Citizens Bank, Prattville	25,208.96
The City National Bank	15,810.00
First Bank of Macon County	20,043.83
First Alabama Bank of Gadsden, N.A.	4,763.68
The First National Bank of Autauga County	13,530.59
The First National Bank of Florence	5,500.00
The First State Bank of Altoona	10,098.05
The First State Bank of Lamar County	9,389.39
The Fort Deposit Bank	40,115.75
The Greenville Bank	2,843.45
Luvurne Bank and Trust Company	3,866.00
MetroBank	30,000.00
Merchants National Bank	19,000.00
National Bank of Commerce of Birmingham	15,237.32
The Peoples Bank of Carrville	9,285.30
Peoples Bank of Tuscaloosa	6,000.00
Pike County Bank	11,764.95

Shelby State Bank	8,758.42
Southern National Bank	5,783.63
Southern Bank, N.A.	500,000.00
Union Bank & Trust Co.	51,104.54
Wilcox County Bank	100,650.00

against the peace and dignity of the State of Alabama."

The evidence presented by the State showed that appellant did not correctly complete the "Statement of Economic Interests" on the form furnished her by the State Etchics Commission. This form included a Statement of Indebtedness to Banks, Credit Unions and Savings and Loan Associations, Insurance Companies, Mortgage Firms, Stock Brokers, Other Businesses (credit card indebtednesses), and Individuals. Petitioner signed the form on April 29, 1977, and it was received by the Commission on May 2, 1977. The form expressly required a report of debts owed to all businesses operating in Alabama on December 31 (1976) including debts of the spouse and dependent children.

The statement of indebtedness is required pursuant to the provisions of Section 36-25-14, Code of 1975. This section further provides, in part, "in the event that said information required herein is

not filed as required, the Commission shall notify the public official or employee concerned as to his failure to so file and the public official shall have 10 days to file said report after receipt of notification.

> "(b) After the original filing of the above prescribed statement(s), each person shall make additional subsequent filings within 90 days after the termination of each succeeding reporting year..."

It was stipulated that appellant was the State Treasurer at the time she filed the financial statement for the year ending on December 31, 1976. The financial statement filed by Mrs. Allen revealed that she was indebted to a total of 12 Alabama banks.

The State then proceeded to call witnesses to prove the allegations of the indictment to show that Mrs. Allen was individually or jointly indebted to 36 banks instead of 12 banks as she reported on her disclosure statement. The first witness was Mary McDaniel who testified that she was employed by the Alabama City Bank at Gadsden, Alabama, and was custo-

dian of the records of that bank. She stated that appellant and her husband executed an unsecured note to the bank in the year 1976 in the amount of $10,000.00. This note was given and accepted by the bank as security on a note made to the bank by D. E. Locklear and wife, Bette Locklear, who had defaulted on the payment of the note. The note executed by Mrs. Allen and her husband was outstanding on December 31, 1976. Appellant failed to disclose this indebtedness to the State Ethics Commission. Ms. McDaniel further testified that, on the date of appellant's strial, there was an outstanding balance due on this note in the amount of $8,890.00. The note was introduced into evidence.

Mr. Hugh Webb testified that he was the Drive-In Manager and Custodian of the records of the Cherokee County Bank, Centre, Alabama. He stated that appellant was personally liable on a note to the bank on October 14, 1976, in the amount of $7,814.00. The loan records were introduced into evidence.

Mr. Donald G. Henderson stated that he was the custodian of the records of the City Bank of Alabama, Fultondale, Alabama.

He said that Mrs. Allen executed an unsecured note to the bank in the amount of $15,000.00 and this indebtedness was outstanding on December 31, 1976. The note was introduced into evidence.

Mrs. Jo Karen Parr testified that she was an attorney with an outstanding law firm in Montgomery and a Certified Public Accountant licensed to practice accounting by the State Board of Public Accountants in the State of Alabama. Also she is a part time Deputy District Attorney for Montgomery County and had been serving in that position since May 1, 1978. It was the duty of Mrs. Parr to examine all the notes and bank records of the various banks to which appellant was indebted during the year 1976 and had filed to list on the disclosure statement filed with the Ethics Commission. A great number of these notes and records had been subpoenaed at the instance of the Montgomery Grand Jury. Her testimony on direct examination covered some 40 pages in the transcript. We will summarize her testimony for the sake of brevity.

Mrs. Parr stated that she found four notes signed by Mrs. Allen to the Alabama

National Bank of Montgomery which were outstanding on December 31, 1976. These notes and bank records were identified by State's exhibit numbers and introduced into evidence but we see no useful purpose in mentioning exhibit numbers. There was one note in the amount of $5,000.00 and one in the amount of $6,500.00 both of which were unsecured. There was one note in the amount of $35,000.00 executed by Randy E. Allen, Marvin E. Allen, and Melba Till Allen. This note was secured by 508 shares of stock in the Keith Williams Corporation, a contracting firm owned by the Allen family. There was another note in the amount of $2,556.00 signed by Mrs. Allen alone and it was unsecured.

There was an unsecured note, signed by Melba Till Allen, to the Auburn Bank and Trust Company, Auburn, Alabama, in the amount of $7,329.63. This was a renewal note dated June 15, 1976.

There was an unsecured note in the amount of $5,475.51, signed by Melba Till Allen, to the Bank of Huntsville, Huntsville, Alabama. The note was outstanding on December 31, 1976.

Mrs. Parr viewed the bank records of the Bank of the Southeast in Birmingham,

Alabama, and ascertained that Mrs. Allen was indebted to that bank in the amount of $50,000.00 as evidenced by an unsecured note which was outstanding as of December 31, 1976. The note was dated November 5, 1976.

This witness viewed the records of the Brent Banking Company in Brent, Alabama, and found that Mrs. Allen had executed an unsecured note to that bank in the amount of $10,060.25 which was due at the year end of 1976.

Mrs. Allen signed an unsecured note to the Cahaba Bank and Trust Company in the amount of $10,000.00. The unpaid balance on this note as of December 31, 1976, was $8,682.01.

Mrs. Allen was indebted to the Central Bank of Birmingham on a note in the face amount of $8,250.00 which was outstanding on December 31, 1976. The bank records reflected there was a second note in the amount of $15,000.00 signed by Mrs. Allen and Virginia Suggs. Both notes were unsecured and were due and payable as of December 31, 1976.

The records of the Central Bank of Uniontown, Alabama, reflected there was a

promissory note executed by Melba Till Allen, Marvin E. Allen, Mary H. Nolen and Wilbur B. Nolen in the amount of $70,000.00. This note was secured by a real estate mortgage and was outstanding on December 31, 1976.

Mrs. Parr examined the records of the First National Bank of Greenville, Georgiana Branch, and found a secured note on the real estate executed by Marvin E. Allen and Mrs. Marvin E. Allen. The balance due and owing on this note as of December 31, 1976, was $2,412.09.

A review of the records of the Citizens Bank of Oneonta, Alabama, reflected a note signed by Melba T. Allen and Marvin E. Allen in the amount of $59,000.00. This note was secuted by a real estate mortgage and was unpaid as of December 31, 1976.

A promissory note was executed by Melba Till Allen to the Citizens Bank of Prattville, Prattville, Alabama, dated December 30, 1976, and secured by a 1973 Kenworth Tractor and a 1967 Hardy Trailer with a 1975 Model Box. Mrs. Allen was solely liable on this note. The balance due and owing on December 31, 1976, was $25,208.96.

Mrs. Allen signed a promissory note to

City National Bank of Sylacauga, Alabama, dated November 15, 1976, in the amount of $15,810.00. This was an unsecured note and the note was outstanding on December 31, 1976.

Mrs. Parr further testified that the First Bank of Macon County was no longer in existence and the F.D.I.C. had custody of their loan records. She went to the F.D.I.C. Liquidator's Office in Notasulga and reviewed the loan records there. She stated, "This is a note and ledger card. The note is dated August 26, 1976. The amount of the note is $20,043.83. The note is signed by Melba Till Allen." The note is unsecured and was due and unpaid on December 31, 1976.

Mrs. Allen signed a $5,000.00 note to the First City National Bank of Gadsden, Alabama, dated June 27, 1972, payable on demand. It was an unsecured note and the outstanding balance on December 31, 1976, was $4,753.68.

Mrs. Allen signed a note to the First National Bank of Autauga County, dated October 5, 1976, in the amount of $13, 530.59. The note was unsecured and the face amount of this note was due and un-

paid on December 31, 1976.

Mrs. Allen executed a note payable to the First National Bank of Florence, Alabama, in the amount of $5,500.00, dated August 25, 1975. The note was unsecured and the amount was due and unpaid on December 31, 1976.

An unsecured note in the face amount of $12,000.00 was signed by Mrs. Allen to the First State Bank of Altoona on September 12, 1972. As of December 31, 1976, the unpaid balance was $10,098.05.

A note signed by Marvin E. Allen and Melba Till Allen payable to The First State Bank of Lamar County, dated March 18, 1975, in the amount of $17,300.00 was secured by a 1973 White Freight Liner Truck and a 45 foot Hoffer Trailer. The outstanding balance on this note as of December 31, 19756, was $9,389.39.

Two promissory notes, $10,000.00 and $30,000.00 respectively, were executed by Mrs. Allen alone to The Fort Deposit Bank on August 18, 1976. These two notes were secured by a mortgage signed by Melba Till Allen and Marvin E. Allen. According to the testimony of Mrs. Parr, "The ledger card reflects that $40,115.75 is due and

owing as of December 31, 1976."

An unsecured demand note in the amount of $2,843.45 was executed by Melba Till Allento the Greenville Bank and this same amount was outstanding and unpaid, according to the bank's loan records, as of December 31, 1976.

The general liability ledger of the Luverne Bank and Trust Company reflected that as of December 31, 1976, Mrs. Allen owed the bank $3,866.57. The note originally signed by Mrs. Allen was repaid on October 25, 1977.

An unsecured note in the amount of $30,000.00 was executed by Melba Till Allen and Louise Nolen to the Metrobank of Birmingham on October 1, 1976. The note was outstanding and unpaid as of December 31, 1976.

Mrs. Allen signed an unsecured note in the amount of $19,000.00 payable to The Merchants National Bank of Mobile on November 9, 1976. This was her indebtedness alone and this sum was unpaid on December 31, 1976.

A promissory note in the sum of $15,237.32, payable to the National Bank of Commerce of Birmingham, was executed by Melba Till Allen on October 18, 1976, and this note

was due and payable on January 17, 1977. She was still indebted in this amount on December 31, 1976.

A note signed by Marvin E. Allen and Melba Till Allen, payable to the Peoples Bank of Carrville, in the sum of $25,200.00, dated Janaury 24, 1975, was secured by one 1973 Kenworth Diesel Tandem Truck and one 1974 40 foot flat trailer. Both Mr. and Mrs. Allen were personally and individually liable on this note. It was not a corporate indebtedness. As of December 31, 1976, there was an outstanding balance on this note in the amount of $9,285.30.

A promissory note, dated November 29, 1976, in the amount of $6,000.00 payable to the Peoples Bank of Tuscaloosa, was signed by Melba Till Allen alone. It was an unsecured note and the entire amount was outstanding on December 31, 1976.

A promissory note dated June 29, 1976, in the sum of $7,731.29, payable to the Pike County Bank, was signed by Marvin E. Allen and Melba Till Allen. This note was secured by a 1972 model Mack Truck and a 1972 East Dump Trailer. This was not a corporate obligation. Both Mr. and Mrs.

Allen were personally and individually liable on this note.

The Pike County Bank records reflect that an installment note in the original amount of $11,308.52 was executed by Melba Till Allen alone. This note was secured by a 1971 East Dump Trailer equipped with a hydraulic hoist. Mrs. Parr testified that she had not totaled the amounts due and owing on these two notes but both notes were unpaid as of December 31, 1976.

A promissory note, dated July 10, 1976 in the amount of $8,500.00 payable to the Shelby State Bank, was signed by Melba Till Allen, alone. It was an unsecured note and on December 31, 1976, there was an outstanding balance of $8,758.42.

A promissory note, dated Janaury 27, 1976, in the amount of $6,262.27, payable to the Southern National Bank of Birmingham, was signed by Melba Till Allen. The note was unsecured and on December 31, 1976, the unpaid balance was $5,783.63.

A promissory note, dated August 27, 1976, in the amount of $500,000.00, payable to the Southern Bank, N.A., Montgomery, Alabama, was executed by Melba Till Allen, Louise H. Nolen, and Mark Lyons, III, and

this note was secured by a real estate mortgage. As of December 31, 1976, this same amount was outstanding.

Mrs. Parr reviewed the loan records of the Union Bank and Trust Company and found three notes that were unpaid and that were outstanding on December 31, 1976. An unsecured note, payable on demand, signed by Mrs. Allen, on which there was an unpaid balance in the amount of $4,887.44. There was another note, dated December 3, 1976, in the amount of $24,200.00, executed by Marvin E. Allen and Melba Till Allen. It was secured by the transfer and assignment of a promissory note and mortgage. Mrs. Parr stated she found an installment note on a ledger card which was paid on June 30, 1977, but that the indebtedness represented by these three notes was unpaid as of December 31, 1976. These notes and loan records of the bank were introduced into evidence.

Mrs. Parr further testified that she checked the records of the Wilcox County Bank which had closed its banking operations. The records were in the possession of the F.D.I.C. Liquidating Agent. She was asked if these records reflected any

loans to Mrs. Allen. She replied, "Yes, sir. The bottom document in the earlier document or the document that we're most concerned with here. It's a note dated November 27, 1976. The face amount of the note is $100,640.00. It is signed by Marvin E. Allen and Melba Till Allen. The note is unsecured." This amount was still outstanding as of December 31, 1976.

Mrs. Parr concluded her testimony by saying that she didn't go to any banks that did not have any outstanding indebtedness on Mrs. Allen. All of the notes, ledger sheets and related bank documents, examined by Mrs. Parr and introducted into evidence, pertaining to personal and joing indebtedness to the 36 banks listed on the indictment. Stated another way, none of them involved corporate indebtedness or obligations.

It was the State's theory that Mrs. Allen filed a false statement on her finanacial condition to the Ethics Commission, dated April 29, 1977, and received by the Commision on May 2, 1977, with the avowed intent to deceive and conceal her true and accurate indebtedness from the Ethics Commission; that she did this with

an evil intent to hide from the Commission her true financial condition and, ultimately, to prevent the general public from knowing the truth as to her indebtedness. It was the State's contention that Mrs. Allen concocted a scheme to get several banks in Albama to issue letters of credit in the sum of $50,000.00 each so that she could use these letters of credit at an out of state bank and consolidate her indebtedness, discharge her obligations so that in the event her disclosure statement was checked it would show she had a clean slate. The record reflects that her scheme was deliberate and willful and her motives were mala in se. If her financial disclosure statement had been truthful, reflecting that she was indebted to State banks in amounts over one million dollars, the wrath of the general public would have swept across this state with hurricane force, leaving her political future in shambles. It was certainly relevant for the State to adduce evidence from which the jury could legally infer her true motives and evil intent.

The State called Mr. H.G. Hayes, President of the American Bank of Geneva, who

testified that he met Mrs. Allen in the summer of 1977 at a local motel and from there they went to a local restaurant for dinner. He could not recall the precise date but said it was some time in September. They were accompained to the restaurant by Mrs. Louise Nolen, Vance Dyar and Mr. John Ward. Mr. Ward was Chairman of the Board of the American Bank of Geneva. Mr. Hayes further testified that the purpose of the meeting was to obtain letters of credit from banks to consolidate loans of Mrs. Allen. He explained that a letter of credit is a commitment from a bank for a loan some time in the future.

State's Exhibit No. 50 was shown to Mr. Hayes and he identified it as a copy of a letter of credit issued by the American Bank of Geneva to Leisure and Development Properties, Inc., for $50,000.00 on the condition that it would not be used or negotiated for three years, and, "We had a ten day option at that time to negotiate it." He said it was explained to him in Mrs. Allen's presence that Leisure Development was to be the medium through which letters of credit would be used at some out-of-state bank or place to obtain a

loan to consolidate other loans. He stated that prior to the issuance of the letter of credit Mrs. Allen had a loan from his bank and her indebtedness was to be paid by a consolidated loan from out of Alabama. It was Mrs. Allen's loans which prompted the meeting on this occasion and which prompted the issurance of a Letter of Credit by his bank. Mr. Hayes further testified that the $50,000.00 Letter of Credit issued by the American Bank of Geneva was subsequently voided due to "all the publicity about the activities of the Treasurer's Office."

Mrs. Allen was not an incorporator of Leisure and Development Properties, Inc., a corporation. However, she wrote the following letter on August 23, 1977:

"To: Seclected Banks of Alabama

"From: Melba Till Allen

"Gentlemen:

"As the holder of this letter, you are hereby guaranteed by me that I accept total responsibility for any Letter of Credit issued by you to Leisure & Development Properties, Inc., according to the terms and conditions of said Letter of Credit.

"I have read and understand the terms and conditions of your Letter

of Credit, thus making this letter my personal irrevocable guarantee to pay same.

"Copy of this letter will serve the purpose as the original.

"Sincerely yours,
/s/ Melba Till Allen
Melba Till Allen

"MTA:n

"I hereby certify that this is a true and correct copy of Letter of Intent and Mrs. Allen appeared before me this date, August 23, 1977 and voluntarily signed same.

/s/ Louise H. Nolen
Louise H. Nolen

A copy of the Articles of Incorporation was introduced into evidence as State's Exhibit No. 53. An examination of this Exhibit does not show that Mrs. Allen was an incorporator, officer, director, or shareholder. According to the above quoted letter she became a guarantor to any bank in Alabama issuing a Letter of Credit to such corporation. Certainly some consideration must have accured to her to issue such a letter of guaranty.

The State called as a witness the custodian of records in the Office of the Judge of Probate to prove the Articles of Incorporation of Leisure and Development

Properties, Inc. The Incorporators were Louise H. Nolan, M. F. Dyar, and Jack Bonner. The date of incorporation was August 31, 1977.

The State introduced into evidence Exhibit No. 51 which reads as follows:

"Route 1, Box 225
Hope Hull, Alabama 36043
August 11, 1977

"To: Selected Banks of Alabama

"From: Melba Till Allen

"Gentlemen:

"This letter will introduce Mr. V.C. Dyar, who is assiting me in the formation and combining of various properties owned in part and in whole by me.

"Mr. Dayr will explain in detail the proposed plan of action I am seeking to develop. Any courtesies extended Mr. Dyar on my behalf, and any assistance you might render will be greatly appreciated.

"Yours very truly,
/s/Melba Till Allen

"MTA:n

"Sworn to and subscribed before me on this 11th day of August, 1977.

/s/Louise H. Nolen
Notary Public

"Seal:"

Mr. Melvin G. Cooper, Executive Director of the Alabama State Ethics Commission,

explained to the court and the jury the functions of the Commission. He identified State's Exhibit No. 6 as the Statement of Economic Interests that is required to be completed by April 30th of each year by all elected and appointed public officials of the State and all employees earning $15,000.00, or more. State's Exhibit No. 6 was the form filed by Mrs. Allen and it was received into evidence without objection. This form includes the spouse and dependent children of the reporting official or employees. The form also includes income from salaries and businesses. Mrs. Allen listed here salary as Treasurer of the State of Alabama, and income from Keith Williams, a construction company, Quail Run and PSWALA ATD. Her salary listed by an "X" mark in the column as being $10,000.00 or more. She put an "X" in the same column as salary from Keith Williams, and a "X" in the same column as profits from Quail Run. In the column headed $1,000.00 but less than $10,000.00 she listed PSWALA ATD and notes the income was "fees".

In column B she listed the following businesses from which she, her spouse and dependent children received no income:

Lou-Mel Corp., Stars Over Alabama, and Ross Ag. Enterprises.

The form requires the reporting person to set out all indebtedness to all businesses operating in Alabama on December 31 of each year in which the report is filed. Mortgages on the home in which the reporting person lives are not to be included. The businesses include banks, loan associations, insurance companies, mortgage firms, stock borkers, other businesses, and individuals. On this part of the form Mrs. Allen listed 12 banks and one insurance company.

Mr. Cooper testified that he had in his possession a document showing that Mrs. Allen was indebted to a number of banks greatly in excess of 12. In an endeavor to get Mrs. Allen to disclose to the Ethics Commission the true number of banks to which she and her husband were indebeted, he wrote her the following letter on September 23, 1977: (State's Exhibit No. 5)

"The Honorable Melba Till Allen
State Treasurer
State of Alabama
State Capitol
Montgomery, Alabama 31630

"Dear Mrs. Allen:

"We are completing a review of

Statements of Economic Interests, filed by officials and certain employees of State, County and Municipal government between January 1 and April 30, 1977.

"In this connection, we have received information possibly indicating through oversight, you did not show the proper number of banks to which you and your husband were indebted as of December 31, 1976. Additionally, a question has been raided as to whether you were also indebted to 'other businesses' as shown in Item VI of the financial disclosure form.

"It is also possible that you have omitted ownership of property in Montgomery County which should be shown in Item IV. I have attached copies of the appropriate pages in the event you wish to amend your Statement of Economic Interests. Of course, if the entries you have previously made are correct, you need only inform us of this fact.

"Finally, we would appreciate a definition of 'Quail Run' and 'PSWALA ATD' which are shown as sources of income in Item II of the Form. My we hear from you regarding these matters by October 7, 1977?

"Thank you in advance for your cooperation and assistance.

"Sincerely,

Melvin G. Cooper
Executive Director

"MGC/js
"Enclosures"

On September 26, 1977, Mrs. Allen replied to Mr. Cooper's request by the following letter:

"Mr. Melvin G. Cooper
Executive Director
State Ethics Commission
State of Alabama
312 Montgomery Street
Montgomery, Alabama 36104

"RE: Review of
Statement of
Economic Interest.

"Dear Mr. Cooper:

"As per your letter with reference to my Hope Hull, Alabama, property, I did not include the house and land in Hope Hull, where we reside. I understood that I was to omit that. However, I will be happy to give you this information if it is required.

"Regarding 'indebtedness to other businesses,' we were negotiating with Hawthorne Melody Farms owners for an additional part of Stars Over Alabama, but the negotiations were not finalized until after the reporting time, therefore, I could not truly list it, because it was not finalized.

"I did not realize that I was to

include business loans in the top part of the form, but if I was supposed to list all corporate loans, I would have to go into great detail, because Keith Williams Corporation owns many pieces of equipment and grossed over 1.5 million last year.

"'Quail Run', is defined as a piece of property or a subdivision in Mobile, Alabama.

"'PSWALA, Ltd.', is an interest in a movie.

"I do not now, or have never owned property in Wahington County.

"If I can be of further assistance in clarifying this matter, please advise.

"Sincerely yours,
/s/Melba Till Allen
MELBA TILL ALLEN
State Treasurer

"MTA/mb"

It will be noted in this letter that Mrs. Allen did not mention any additional banks to which she or her husband were indebted.

Evidently the new media had learned about Mrs. Allen's financial problems and began a series of articles concerning them. On October 6, 1977, Mrs. Allen wrote the following letter to Mr. Cooper which was

introduced into evidence as State's Exhibit No. 7:

"Mr. Melvin G. Cooper
Executive Director
State Ethics Commission
312 Montgomery Street
Montgomery, AL 36104

"Dear Mr. Cooper:

"Although corporate loans are not required on our ethics report, I want to disclose them to you in view of the vicious attack by The Birmingham News regarding any person or corporation in which I am involved.

"As the Keith Williams Corporation is a corporation owned completely by my family, some of the loans are endorsed by, or in the name of, my husband, son or me. The Corporate records reveal that these are Corporate loans, and endorsements are an added protection for the lender.

"The much publicized 'Stars Over Alabama' project is real estate in North Alabama. The loans on this property were already in the banks when I became involved; however, accounts payable loans have been made since.

"On the attached page I have listed loans for the different businesses to the best of my knowledge as of December, 1976.

"Yours very truly,
/s/Melba Till Allen

"MELBA TILL ALLEN
STATE TREASURER

"MTA:rdf
"Attachment"

To this letter Mrs. Allen attached a statement headed "Keith Williams Trucking Company - Statement of Indebtednesses." This attachment was not on the copies of the form sent her by Mr. Cooper as mentioned in State's Exhibit No. 5. This attachment was compiled by Mrs. Allen. On this attachment the number of banks to which Mrs. Allen was indebted was shown to be 17 as opposed to 12 banks shown on State's Exhibit No. 6. It cannot be ascertained from the attachment if Mrs. Allen was adding 17 additional banks to which she was indebted or whether she was adding five additional banks. Convinced that Mrs. Allen was not going to cooperate with the Commission in giving full and complete information regarding her financial status the Ethics Commission through the Executive Director wrote Mrs. Allen and requested that she give him and his assistant, Mr. Howard E. McKenzie, blanket authority to review her financial transactions in banks throughout the State. Mrs. Allen wrote a letter to

Mr. Cooper giving this authorization. There were about 311 banks in Alabama and all but 101 banks honored the authorization for Mr. Cooper and Mr. McKenzie to examine the loan records pertaining to Mrs. Allen.

As to the banks which refused to cooperate the Commission directed Mr. Cooper to contact the District Attorney to have the grand jury subpoena the records of these banks. This was done and the loan records of these balking banks were delivered to the Montgomery County Grand Jury and Mrs. Allen was indicted for failing to comply with the Ethics Commission in making a true financial disclosure statement as required by law.

Testifying in her own behalf Mrs. Allen said she waited until almost the last minute on the Ethics Report and it was hurriedly done; that she tried to pick out the loans that were strictly personal and she did not realize that she left out some until it was brought out at trial. She said that she couldn't remember exactly how the loans were titled. She admitted she did not use the copies of the forms sent her by Mr. Cooper, but used a form

that she prepared.

On cross-examination she testified that in the sort time she had to complete the report she could have made a mistake. She tried to explain that some of the loans could have been for the Keith Williams Company which was owned by her, her husband and son. She stated that there was 17 bank loans on behalf of the company. She claimed that she listed more loans than were contained in the indictment.

Mrs. Allen testified on direct examination that no "bank or anybody lost one dime", as a result of her actions. The State cross-examined Mrs. Allen in regards to several loans, one from the First Bank of Alabaster and one from the First Alabama Bank of Montgomery. The loan from the First Bank of Alabaster, State's Exhibit No. 56, concerned a business venture involving a motion picture. The venture was in the form of a limited partnership with Mrs. Allen signing the promissory note as general partner. BAP-SH Films, Ltd. was the original name of the venture, but it later became known as PSWALA. The two names were acronyms composed of the initials of the parties

involved.

Earl Standifer was affiliated with the BAPSH Films, Ltd. venture. He signed three promissory notes in the amount of $16,250.00 each which were used as collateral for the loan from the First Bank of Alabaster. These three notes were introduced into evidence as State's Exhibit 57.

Under cross-examination Mrs. Allen testified that she represented to Standifer that these notes would be paid "from the earnings of the film." "I told him that if later down the road if he wanted to sell it there were some other people interested." Though she did not remember exactly, she stated her words "could have been" to the effect that she would find buyers for Standifer's part of the venture.

The State offered a letter marked State's Exhibit 58 for appellant to examine. She did so and read the contents of the letter into evidence.

> "Dear Melba: Mr. Ned Bearden, President of the First Bank of Alabaster, called me to come in and talk with him regarding the note that I co-signed with you in the name of Bapsh Films, Ltd. It was due August 10, 1977. He stated that the bank examiners said that it had to be either

paid off or security made immediately to satisfy them. Please take care of this right away.

"Melba, according to the information in my file, this is not even close to what we initially invested in. Therefore, I want you to sell my part, as you said you could do, just as soon as possible, and clear this matter up with my banker.

"I am looking forward to hearing from you very soon.

"Sincerely,
Earl Sandifer."

Mrs. Allen testified that she had not sold Standifer's share of the venture.

.Mrs. Allen further testified that Thelma Eubanks was initially going to buy into BAPSH Films, Ltd., but later changed her mind. The State offered for Mrs. Allen's examination and subsequently into evidence State's Exhibit No. 59, a note to the First Alabama Bank of Montgomery, dated May 4, 1976, in the amount of $25,000.00 and signed by Mrs. Allen, Virginia H. Suggs and Thelma Eubanks.

"Q. Then you're saying that at the time she signed this note that she became a limited partner in BAPSH, Films, Ltd.?

"A. She was in the process. I'm not sure. That was her part of it, so I'm not really sure."

Mrs. Allen stated that at the time Mrs. Eubanks signed the note, "We discussed with her exactly like we did the others.. We just told her about the film. I really couldn't represent a great deal because I don't know that much about films."

Mrs. Eubanks later told Mrs. Allen that she wanted to get out of the venture. Mrs. Allen told Mrs. Eubanks that she would be glad to get her off the note if the bank would let her off. Subsequently when Mrs. Allen talked to "the bank", the bank officials were unwilling to release Mrs. Eubanks from her obligation. Mrs. Allen testified that at some point Mrs. Eubanks was no longer obligated. Appellant said, "As far as I understood, she was, because we renewed it and she didn't sign it. I was not misrepresenting anything to her." "Q. I understand, but did you tell her that?" (A)"Yes, because I understood she was [off the note] because the bank allowed us to renw it and pay the interest without her signing it... He [an officer with First Alabama Bank] let me renew it without her

signing it."

After a discussion in chambers the State continued its cross-examination of Mrs. Allen. She testified about another business proposal, known as Leisure Development Company, Incorporated. Mrs. Allen said this was proposed by Vance C. Dyar, one of her associates "to put mine and Mrs. Nolen's assets into this corporation." Asked whether she went along with his proposal, she said, "Absolutely note." At this point she was asked whether or not she did in fact write a letter guaranteeing a letter of credit to the corporation. Mrs. Allen replied:

> "A. I"m glad to have the opportunity to talk about that letter. That is the letter that I signed for my partner for an authorization, and she let Mr. Dyar have it and he made a blanket endorsement out of it. And the first time I read that letter was in the Birmingham News, but it is my signature. Are you talking about the endorsement or the other one?
>
> "Q. I'm talking about State's Exhibit No. 52, Mrs. Allen.
>
> "A. Yes, this is the one that was used over my signature. This was given to Louise just blank, my partner, that I've been in business with since '73.

I had no reason to worry about her having a sheet of paper with my signature on it."

Continuing, Mrs. Allen testified that although the letter was notorized, she signed only a blank page, it was not a letter of guaranty.

The State, proceeding further, asked Mrs. Allen about another letter, State's Exhibit 51, and about the Leisure Development Company, Inc. When asked about a meeting which allegedly occurred at the Sahara between her, her associates, and officers of a Geneva bank, Mrs. Allen denied that business proposals were discussed. She testified that the conversation was casual, "just chit-chat."

The State put on several witnesses to rebut Mrs. Allen at the conclusion of her testimony. Louise Nolen and Thelma Eubanks testified concerning their association with Mrs. Allen, as did H. G. Hayes of the American Bank of Geneva.

Thelma Eubanks testified that Mrs. Allen, Mrs. Suggs, and a Mr. Puckett asked her to invest in the BAPSH Films, Ltd., but that she did not have any money to do so. Mrs. Allen then asked her if she would endorse the note, State's Exhibit 59, say-

ing they would only have it a short time and they would repay it. Mrs. Eubanks endorsed the note. Later she asked Mrs. Allen about the note and Mrs. Allen told Mrs. Eubanks she was no longer obligated. Mrs. Eubanks testified that she is presently the defendant in a suit filed by the bank to recover the note.

H. G. Hayes is President of the American Bank of Geneva. He stated that during the summer of 1977 he and John Ward, Chairman of the Board of Directors of the bank, met Mrs. Allen, Vance Dyar, and Mrs. Nolen at the Sahara Restaurant in Montgomery.

Mr. Hayes was asked if anything was discussed by any person in the presence of Mrs. Allen concering the letter of credit that was issued by his bank in September of 1977 to the Leisure Development Company, Inc. He replied, "Just that they were going to obtain, I thought, some nine, I believe, letters of credit of $50,000 each to be used to consolidate loans." He stated that the letter of credit given by his bank was guaranteed by a letter of guaranty from Mrs. Allen, which was delivered to him on August 23, 1977, by Dyar.

Testifying further, Mr. Hayes said that at the meeting in Mrs. Allen's presence, the subject of obtaining State deposits for his bank was discussed. He said, "At the supper meeting, "Dyar had told them they would get a State deposit that night. Hayes said Mrs. Allen stated, "That she had been interviewed by the Birmingham News that day and did not have time to get the deposit ready." Hayes stated that Mrs. Allen said after the meeting "that she could give us some demand deposits from time to time but it would have to be in small increments... because the legislature was watching the Treasurer's Office very closely concerning the deposits." Mr. Hayes stated that he saw Dyar subsequently and that on one occasion Dyar flew to the Geneva Airport with a State deposit for $500,000.

The appellant contends that the State by asking Mrs. Allen about the loans, and her representations thereto, was cross-examining her for impeachment purposes by asking her of her own specific bad acts in order to show her bad character. Likewise the appellant contends that the State by asking Mrs. Eubanks about her dealings

with appellant was attempting to show the witnesse's bad character by testimony of others as to their knowledge of her specific bad acts. The appellant further contends that the State's examination of Mr. Hayes adduced testimony about prior acts of the appellant's misconduct which was irrelevant and specifically excluded by the rules of evidence.

The record reflects that in each instance the State was proceeding with a logical purpose different from that alleged by the appellant.

A witness, by taking the stand, puts in issue his character or reputation for truthfulness. Pugh v. State, 42 Ala.App. 499, 169 So.2d 27. One method of impeaching a witness is to disprove his statements made in court by the testimony of other witnesses. Jones on Evidence, 26.1, pg. 170. It is competent for a party to contradict his adversary's witness by showing the facts to be otherwise than as testified to by him, and thus discredit the witness. Smith v. State, 261 Ala. 270, 73 So.2d 916. An accused in a criminal prosecution who testifies in his own behalf is likewise subject to contradiction. Holloway v.

State, 38 Ala.App. 434, 89 So.2d 313, cert. denied 265 Ala. 697, 89 So.2d 317. The State was plainly rebutting or contradicting Mrs. Allen's testimony.

The facts adduced by the State were plainly material and relevant. They show a motive for Mrs. Allen's non-disclosure, from which her intent may be inferred, i. e., if her extensive financial schemes had not existed there would have been no reason not to make a full disclosure.

Appellant contents that Act No. 130 is unconstitutional in that it violates Section 173 of the Constitution of 1901 which governs the impeachment and removal from office of certain public officials for the commission of designated crimes specified in that section. Appellant overlooks Section 176 of the Constitution of 1901 which provides:

> "The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, under authority of this state, for the term for which the officer was elected or appointed; but the accused shall be liable to indictment and punishment as prescribed by law." (Emphasis supplied)

The Supreme Court of Alabama in Comer v. City of Mobile, Ala., 337 So.2d 742, upheld the constitutionality of Act 130 by holding: "The purpose of Act No. 130 was not so altered as to bring the taint of unconstitutionality as to all of its sections not heretofore stricken."

This Court followed Comer in affirming the conviction of appellant in an unrecase on November 20, 1979, in an opinion by Judge DeCarlo.

Mrs. Louise Nolen was one of the incorporators of Leisure and Development Properties, Inc. She testified that the purpose of the corporation was to try to get all loans of Mrs. Allen and her loans together with their assets and put them under one umbrella; that Mrs. Allen was well aware that was purpose of the corporation as they both had discussed it. She further stated, "We were to incorporate all the Alabama loans into one company and due to the fact that Mrs. Allen was in politics, and attempt to get them in another out of state bank with the assets."

The testimony of Mrs. Nolen flatly contradicted the testimony of Mrs. Allen

wherein she denied trying to get her loans in an out-of-state bank.

The evidence presented by the State, although conflicting, was overwhelming that Mrs. Allen filed a false Financial Statement with the State Ethics Commission. The State proved the allegations of the indictment beyond per-adventure of a reasonable doubt.

Where there is legal evidence from which the jury can by fair inference find the defendant guilty, the Court of Criminal Appeals has no right to disturb the verdict; whether there is such evidence in question of law, its weight and probative value are for the jury. Ala.Dig., Criminal Law, Key No. 1159.2(8).

Appellant filed a motion for a new trial and extensive hearings were held. At the conclusion of these heraings the trial court overruled and denied the motion. Decision on a motion for a new trial rests largely within the sound discretion of the trial court and, in reviewing that decision the Court of Criminal Appeals will indulge every presumption in favor of the correctness thereof. Ala. Dig., Criminal Law, Key No. 911.

We have carefully read, and reread, the five volume record in this case. We have searched the record for errors injuriously affecting the substantial rights of appellant and have found noen. The judgment of conviction is, in all things, affirmed.

AFFIRMED.

All the Judges concur except Bookout, J. who concurs in the result.

APPENDIX B

CODE OF ETHICS

CHAPTER 25.

CODE OF ETHICS FOR PUBLIC OFFICIALS, EMPLOYEES, ETC.

Sec.

36-25-1. Definitions.

36-25-2. Legislative findings and declarations; purpose of chapter.

36-25-3. State ethics commission - Creation; composition; qualifications, apppointment, terms of office, reappointment and compensation of members; officers; filling of vacancies; annual reports; applicability of chapter, etc., to members, employees, etc.; executive director and staff; waiver of rules and regulations.

36-25-4. Same - Powers and duties generally.

35-25-5. Use of official position or office for personal gain.

36-25-6. Offering, receiving, etc., gifts, favors, etc.

36-25-7. Solicitation or receipt of money for advice or assistance; receipt of fees for services provided by state; disclosure statement.

36-25-8. Use of disclosure of confidential information for private financial gain.

36-25-9. Service on regulatory boards and commissions regulating business with which person associated.

36-25-10. Representation of client or constituent before state agency, department, etc.

36-25-11. Entering into contracts with state agencies.

36-25-12. Promises of future employment, favors, etc., for members of governmental regulatory agencies, boards, etc.

36-25-13. Requirements as to notice of lobbying by former officials or employees before bodies of which such persons were members or employees; entry into contracts with governmental agencies by former officials or employees.

36-25-14. Filing of statements of economic interests.

36-25-15. Statements of economic interests and notice of candidacy of candidates for state office.

36-25-16. Reports by persons related to state officials or employees who represent persons before state agencies or who contract with state.

36-25-17. Reports of violations; cooperation of agency heads; preparation and publication of procedure for review and appeal.

36-25-18. Registration of lobbyists required; filing of supplemental registration.

36-25-19. Monthly reports to be filed by lobbyists, etc., when legislature in session.
36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.
36-25-21. Reports filed by lobbyists constitue public records; reports open to public inspection.
36-25-22. Provisions of sections 36-25-18 through 36-25-21 not to be construed as affecting certain professional services.
36-25-23. Former members of legislature not to be extended floor privileges for lobbying purposes.
36-25-24. Filing of complaints by citizens generally.
36-25-25. Making false accusation.
36-25-26. Making of false statements, etc. for purpose of influencing legislation.
36-25-27. Penalties for violations of provisions of chapter; prosecution, jurisdiction and venue of actions for violations of chapter, etc.; provisions of chapter not to limit powers of legislature, agencies or commissions to discipline or impeach members, officials or employees nor repeal any provisions of criminal laws.
36-25-28. Constitutional rights of citizens to communicate with members of legislature not to be impaired by this chapter.

36-25-29. Appropriations.

36-25-30. Construction of chapter; repeal of conflicting laws.

Cross references. - As to conflicts of interest of commissioners or employees of municipal housing authorities, see § 24-1-26. As to conflicts of interest of commissioners or employees of county housing authorities, see § 24-1-65. As to prohibition against nepotism in state service, see § 41-1-5.

Collateral references. - 67 C.J.S., Officers, §§116, 133.

63 Am.Jur. 2d, Public Officers & Employees § 313.

§36-25-1. Definitions.

Whenever used in this chapter, the following words and terms shall have the following respective meanings unless the context clearly indicates otherwise:

(1)BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity.

(2)BUSINESS WITH WHICH HE IS ASSOCIATED. Any business of which the person or a member of his family is an officer, owner, partner, employee or holder of more than 10 percent of the fair market value of such business.

(3)CANDIDATE FOR PUBLIC OFFICE. Any person who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official, and any person who has been nominated for appointment to serve as a public official.

(4)COMMISSION. The state ethics commission.

(5)LEGISLATIVE EMPLOYEE. Any person employed by the legislature or by any of its committees and any person employed by a legislator from funds provided by the state, who receives compensation of $23,000.00 or more per year.

(6)LOBBYING. The practice of promoting or opposing the introduction or enactment of legislation before the legislature or the legislative committees or the members thereof, and shall also include the practice of promoting or opposing executive approval of legislation.

(7)LOBBYIST. All persons who seek to

encourage the passage, defeat or modification of any legislation, except members of the Alabama legislature or any person who, on an isolated basis and without the intent to continue beyond a single day during a session of the Alabama legislature, merely appears before a committee or committees of the legislature in his individual capacity, or on behalf of a corporation, partnership, association or other business entity, with which such person is regularly associated as an employee, officer, member or partner without receiving additional salary or compensation other than reasonable and ordinary travel expenses, to express support of or opposition to any legislation, and who shall so declare to a member, members or committee of the legislature with whom he discusses any proposed legislation.

(8) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his United States income tax return(s).

(9) PUBLIC EMPLOYEE. Any employee of state, county or municipal governments who has administrative and discretionary authority for the receipt or expenditures of public funds or who earns in excess of $25,000.00 annually, but shall not include those persons who are primarily engaged in teaching duties in all schools, colleges, and universities in the state.

(10) PUBLIC EMPLOYEE'S FAMILY. The employee's spouse and dependents.

(11) PUBLIC OFFICIAL. Any elected official at the state, county or municipal level of government and any person appointed under state, county or municipal law to an office where in the conduct

of such office such person has administrative and discretionary authority for the receipt or expenditure of public funds. This term shall also include members of state boards, commissions, committees, councils and authorities, however selected, presidents, vice-presidents, chief purchasing officials and chief financial officials of all schools, colleges and universities of the state; members of city and county industrial boards, planning and zoning boards, school boards, boards of adjustment, utility boards, housing boards public hospital boards and any boards, commissions, committees, authorities or councils having jurisdiction with respect thereto, in all cities whose population is more than 15,000 according to the last decennial census. This term excludes members of all other boards not named including but not limited to those commissions, committees, councils, boards of authorities, functioning solely for cultural or historical purposes and advisory board members and members of board of trustees of institutions of higher learning of the state of Alabama.

(12)PUBLIC OFFICIAL'S FAMILY. The official's spouse and dependents. (Acts 1973, No. 1056, p. 1699, §2; Acts 1975, No. 130, § 1.)

§36-25-2. LEGISLATIVE FINDINGS AND DECLARATIONS: PURPOSE OF CHAPTER.

(a) It is essential to the proper operation of democratic government that public officials be independent and impartial; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for private gain other than the remuneration provided by law;

and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired whenever there exists a conflict between the private interests of an elected official or a government employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of elected officials and government employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve the government. Accordingly, legal safeguards against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are best qualified to serve it. An essential principle underlying the staffing of our government structure is that its elected officials and employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of such elected officials and employees to the public cannot be avoided.

(c) The legislature hereby declares that the operation of responsible democratic government requires that the fullest opportunity to afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to committees of the legislature and to officials of the executive branch, their

opinions on legislation, on pending executive actions and on current issues; and that, to preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures and activities of certain persons who engage in efforts to persuade members of the legislature or the executive branch to take specific actions, either by direct communciation to such officials, or by solicitation of others to engage in such efforts, to be publicly and regularly disclosed. The provisions of this chapter shall be liberally construed to promote complete disclosure of all such information and so as to assure that the public interest will be fully protected.

(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the recruitment and retention of qualified personnel by prescribing essential restrictions against conflicts of interest in state government without creating unnecessary barriers to the public service. (Acts 1973, No. 1056, p. 1699, §1; Acts 1975, No. 130, §1.)

§36-25-3. State ethics commission - Creation; composition; qualifications, appointment, terms of office, reappointment and compensation of members; officers filling of vacancies; annual reports; applicability of chapter, etc., to members employees, etc.; executive director and staff; waiver of rules and regulations.

(a) There is hereby created a state ethics commission which shall be composed of five members, each of whom shall be a

fair, equitable citizen of this state and of high moral character. No member of the commission shall be eligible for appointment to succeed himself. The members of such commission shall be appointed by the following officers: the governor, the lieutenant governor and the speaker of the house of representatives and shall assume their duties upon confirmation by the senate. The members of the first commission shall be appointed for terms of office expiring one, two, three, four and five years, respectively, from September 1, 1975. Successors to the members of this first commission shall each be appointed for terms of five years and until their successors are appointed and have qualified. If at any time there should be a vacancy on the commission, a successor member to serve for the unexpired term applicable to such vacancy shall be appointed by the governor. The commission shall elect one member to serve as chairman of the commission and one member to serve as vice-chairman. The vice-chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in that office. As soon as all the members of the board have been appointed, the governor shall call and provide for the holding of an organizational meeting of the commission.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and three members thereof shall constitute a quorum.

(c) The commission shall at the close of each fiscal year report to the legislature and the governor concerning the action it has taken, the names, salaries

and duties of all individuals in its employ and the money it has disbursed, and shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as may appear desirable.

(d) Members of the commission shall, while serving on the business of the commission, be entitled to receive compensation at the rate of $50.00 per day, and each such member shall be paid his travel expenses incurred in the performance of his duties as a member of the commission as other state employees and officials are paid when approved by the chairman thereof.

(e) All members, officers, agents, attorneys and employees of the commission shall be subject to the provisions of this chapter and also to the provisions of law prohibiting political activities by state employees.

(f) The commission shall appoint an executive director and such other staff as is needed. All such appointees shall serve at the pleasure of the commission. All such employees, except for the executive director, shall be employed subject to the provisions of the state merit system law, and their compensation shall be prescribed pursuant to such law. The compensation of the executive director shall be fixed by the commission, but shall not exceed such amount as heretofore or as may hereafter be allowed by law for such officer, payable as the salaries of other state employees. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him from time to time by regulation or

order of the commission. However, the commission shall not delegate the making of regulations to the executive director. The commission may require the executive director to draft regulations, but no regulation shall be implemented by the executive director until adopted by the commission members.

(g) The commission is hereby authorized when in its discretion the ends of justice will be thereby served, to waive any rule or regulation presented relative to any disclosure statement; provided, that such waiver is done in writing stating the reason why and made a part of the public record. (Acts 1973, No. 1056, p.1699, § 17; Acts 1975, No. 130, §1.)

§36-25-4. Same - Powers and duties generally.

It shall be the duty of the commission:

(1) To prescribe forms for statements required to be filed by this chapter and to furnish such forms to persons required to file such statements.

(2) To prepare and publish a manual setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter.

(3) To accept and file any information voluntarily supplied that exceeds the requirements of this chapter.

(4) To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter.

(5) To make reports and statements filed with it available at reasonable hours to responsible public inquiry subject to such regulations requiring identification by name, occupation, address and telephone number of each such person examin-

ing information on file with the commission; provided, that no copies of reports and statements will be removed from the office of the state ethics commission.

(6) To preserve such reports and statements for a period of six years from date of receipt.

(7) To make investigations with respect to statements filed under the provisions of this chapter, and with respect to alleged failures to file any statement required under the provisions of this chapter and, upon complaint by any individual with respect to alleged violation of any part of this chapter; and, whenever in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the examinder of public accounts to have such aduit made and a report thereof filed with the commission. The examinder of public accounts shall upon receipt of such directive immediately comply therewith.

(8) To report suspected violations of law to the appropriate law enforcement authorities.

(9) To issue upon request and publish advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances. The written opinion of the state ethics commission provided to anyone shall protect such person to whom it is directed from liability to either the state, county or municipal subdivision of the state because of any official action or actions performed as directed or advised in such opinion.

(10) To initiate and continue programs for the purpose of educating candidates,

officials, employees and citizens of Alabama on matters of ethics in government service.

(11) To prescribe, publish and enforce rules and regulations to carry out the provisions of this chapter. No such rules and regulations, however, shall be adopted until notice thereof is given by publication at least 30 days prior to the date set for adoption thereof and an opportunity afforded to the public to appear and contest such rules and regulations. The commission is authorized only to make rules and regulations on the subject matter specifically mentioned in this chapter.

(12) After the commission has been organized pursuant to this chapter and has prescribed the rules and regulations and adopted and promulgated such rules and regulations, it shall give notice for 60 days prior thereto of the day on which such rules and regulations shall become effective throughout this state and other provisions of this chapter shall be thereby implemented.

(13) No member nor employees of said commission shall make any public statement or give out any information concerning any complaint against any individual until the investigation of said complaint is completed and the commission has taken final action as to the disposition of said complaint. Any member or employee of said commission who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction be sentenced to the county jail for one year or be fined up to $1,000.00, or both.

(14) In all matters that come before the commission concering a complaint on an individual, the laws of due process

shall be strictly adhered to. (Acts 1973, No. 1056, p.1699, § 10; Acts 1975, No. 130, §1.)

§36-25-5. Use of official position or office for personal gain.

(a) No public official or employee shall use an official position or office to obtain direct personal financial gain for himself, or his family, or any business with which he or a member of his family is associated unless such use and gain are specifically authorized by law.

(b) Unless prohibited by the Alabama Constitution, nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative duties. (Acts 1973, No. 1056, p. 1699, § 3; Acts 1975, No. 130, § 1.)

Cross reference. -As to prohibition against members of municipal councils voting on questions in which they or their employers have special financial interests, see § 11-43-54.

§36-25-6. Offering, receiving, etc., gifts, favors, etc.

No person shall offer to or give to a public official or employee or his family, and none of the aforenamed shall solicit or receive anything of value, including a gift, favor or service or a promise of future employment, based on any understanding that the vote, official actions, decisions or judgment of the intended recipient or family member would be influenced thereby. Expenses associated with social occasions afforded public

officials and employees shall not be deemed a thing of value within the meaning of this section or prohibited hereby. (Acts 1973, No. 1056, p. 1699, § 4; Acts 1975, No. 130, § 1.)

§36-25-7. Solicitation or receipt of money for advice or assistance; receipt of fees for services provided by state; disclosure statement.

(a) No public official or employee or his family shall solicit or receive any money in addition to that received by the official or employee in his official capacity for advice or assistance on matters concerning the legislature, an executive department or any public regulatory board, commission or other body.

(b) No public official or employee or business with which he is associated shall receive any fee, salary, wages or other compensation for services provided to the state or any of its agencies or to any county, or municipality or instrumentalities thereof unless a disclosure statement provided for in this section shall be filed with the commission by the person rendering the services.

(c) The disclosure statement shall include the following information:

(1) The name of the employer.

(2) The amount of the compensation received for the employment; and

(3) The date of employment. (Acts 1973, No. 1056, p. 1699, § 5; Acts 1975, No. 130, § 1.)

§36-25-8. Use or disclosure of confidential information for private financial gain.

No public official or employee shall use or disclose confidential information

gained in the course of or by reason of his position or employment in any way that could result in financial gain other than his regular salary as such state officer for himself, his family or for any other person. (Acts 1973, No. 1956, p. 1699, § 6, Acts 1975, No. 130, § 1.)

§36-25-9. Service on regulatory boards and commissions regulating business with which person associated.

Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county or municipal regulatory board or comission or other body that regulates any business with which he is associated. (Acts 1973, No. 1056, p. 1699, § 7; Acts 1975, No. 130, §1.)

§36-25-10. Representation of client or constituent before state agency, department, etc.

If a public official or employee, or member of his family, or a business with which any of them is associated, shall for a fee represent a client or constituent before any quasi-judicial board or commission, governmental regulatory agency or executive department or agency, notice of such representation must be given within five days after the first day of such appearance to the state ethics commission in the manner prescribed by the commission. No member of the legislature shall for a fee, reward or other compensation represent any person, firm or corporation before the public service commission or the state board of adjustment. (Acts 1973, No. 1056, p. 1699, § 8, Acts 1975, No. 130, § 1.)

§36-25-11. Entering into contracts with state agencies.

Unless exempted under Alabama competitive bid laws or otherwise permitted to do so under law, no public official or employee, or a member of his family, and no business with which any of them is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county or municipal funds unless the contract has been awarded through a process of public notice and competitive bidding and a copy of such contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount entered into by a public official, employee, family member and any business with which any of them is associated shall be filed with the state ethics commission. (Acts 1973, No. 1056, p. 1699, § 9; Acts 1975, No. 130, § 1.)

Cross reference. - As to interest by aldermen or other municipal officers or employees in contracts with municipalities, see § 11-43-12.

§ 36-25-12. Promises of future employment, favors, etc., for members of governmental regulatory agencies, boards, etc.

No person shall offer or give to a member or employee of a governmental agency, board or commission that regulates a business with which such person is associated, and no member or employee of a governmental regulatory agency, board

or commission shall solicit or accept from any such person anything of value including a promise of future employment or a favor or service while the member or employee is associated with the regulatory agency, board or commission. Expenses associated with social entertainment afforded members and employees shall not be deemed a thing of value within the meaning of this section. (Acts 1973, No. 1056, p. 1699, § 10; Acts 1975, No. 130, § 1.)

Cross references. - As to employment of municipal officers by corporations holding franchises for use of streets, see § 11-43-11. As to members of municipal councils holding offices which have been created or the emoluments of which have been increased during the time for which such members have been elected, see § 11-43-53.

§ 36-25-13. Requirements as to notice of lobbying by former officials or employees before bodies of which such persons were members or employees; entry into contracts with governmental agencies by former officials or employees.

(a) No former state official or employee shall serve for a fee as a lobbyist or represent clients before the body of which he is a former member or employee for a period of three years after he leaves such membership or employment, unless notice of such representation is given within five days after such appearance to the state ethics commission in the manner prescribed by the commission.

(b) No former public official or employee shall enter in a contract with any governmental agencies unless within

five days of entering into said contract notice is filed with the commission of his previous status as a public official or employee and a copy of the contract provided. (Acts 1973, No. 1056, p. 1699, § 11; Acts 1975, No. 130, § 1.)

§36-25-14. Filing of statements of economic interests.

(a) No person elected or employed to serve as a public official or employee shall be allowed to take the oath of office or enter upon his duties unless he has previously filed a statement of economic interests in accordance with the provisions of this chapter at the office of the state ethics commission. Such statement shall be made on a form provided by the commission and shall contain the following information on the person making such filing;

(1) Name, residential address, business; name and address of living spouse, minor and dependent children, adult children, parents, brothers and sisters, and to the best of his knowledge the principal occupation of each of these persons;

(2) A list of occupation(s) to which one third or more of working time was given during previous reporting year by the filing official or employee and spouse;

(3) A listing of total combined family income of the public official or employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions and other compensation from any business doing business in Alabama and listing the names of each business and the income derived from such business in the following categorical amounts: less than $1,000.00; at least $1,000.00 and less than $10,000.00;

$10,000.00 or more; further, the person reporting shall name any business or subsidiary thereof in which he or his spouse or dependents, jointly or severally, own one tenth or more of the stock or in which he or his spouse serves as an officer, director, trustee or consultant where such service provides income of more than $1,000.00 for the reporting period;

(4) If the filing public official or employee, or his spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educations, farming, engineering, architectural management or other professional services or consultations, then the filing party shall report the number of clients of such business in each of the following categories and the income in categorical amounts received during the reporting period from the combined number of clients in each category: electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil and/or gas exploration companies, oil and gas retail companies, banks, savings and loan associations, loan and/or finance companies, manufacturing firms, mining companies, life insurance companies, casualty insurance companies and other insurance companies, retail companies, beer, win and/or liquor companies or distributors, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each

category shall be reported as: less than $1,000.00; more than $1,000.00 but less than $10,000.00; $10,000.00 or above;

(5) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following amounts: Less than $1,250.00; $1,250.00 or more;

(6) If real estate that is held for investment or is revenue producing is held by a public official, his spouse or dependents, then a listing thereof by the following categories of fair market value: under $50,000.00; at least $50,000.00 but less than $250,000.00; $250,000.00 or more; and the following categories of annual gross rent and lease income on real estate; less than $10,000.00; at least $10,000.00 and less than $50,000.00; $50,000.00 or more. Furthermore, if a public official or a business in which he is associated receives rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission;

(7) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows:banks, savings and loan associations, insurance companies, mortgage firms and stockbrokers (the commission shall add additional categories as it deems necessary); and the indebtedness to combined organizations in each category in amounts as follows: less than $25,000.00; $25,000.00 but less than $50,000.00; $50,000.00 but less than $100,000.00; $100,000.00 or more. Indebtedness associated with the homestead of the person filing is exempted from this

disclosure requirement. Filing required by this section shall reflect information and facts in existence at the end of the reporting year. In the event that said information required herein is not filed as required, the commission shall notify the public official or employee concerned as to his failure to so file and the public official shall have 10 days to file said report after receipt of said notification.

(b) After the original filing of the above prescribed statement(s), each person shall make additional subsequent filing within 90 days after the termination of each succeeding reporting year. Filings required by subdivisions (5), (6) and (7) of subsection (a) of this section shall reflect information and facts in existence at the end of the reporting year. (Acts 1973, No. 1056, p. 1699, § 12; Acts 1975, No. 130, § 1.)

§36-25-15. Statements of economic interests and notice of candidacy of candidates for state office.

(a) Within 10 days after he becomes a candidate for state office, each candidate shall file a statement of economic interests prescribed by the commission and in keeping with this chapter at the office of the state ethics commission.

(b) Each official who receives a declaration of candidacy or petition to appear on the ballot for election as a state official and each official who nominates a person to serve as a state official shall, within five days of such receipt or nomination, notify the state ethics commission of the name of each new candidate for state office, as defined in this chapter, and the date on which such

person became a candidate.

(c) The state ethics commission shall notify such official and, in the case of candidates for appointive office, the clerk or secretary of the body that will approve or disapprove the nomination, of the name of each candidate who files a statement of economic interests at the office of the commission and of the date on which such statement was filed.

(d) Other provisions of the law notwithstanding, if a candidate for elective public office does not submit a statement of economic interests in accordance with the requirements of this chapter within 10 days after he becomes a candidate, his name shall not appear on the ballot. However, the state ethics commission may in its discretion allow the candidate an additional five days to file such statement of economic interests because of mistake, omission, error or other good cause.

(e) If a person who becomes a candidate for appointive public office by nomination fails to file a statement of economic interests in accordance with the provisions of this chapter within 10 days after such nomination, the nomination shall not be approved or ratified until at least 10 days after he has filed such statement of economic interests. (Acts 1973, No. 1056, p. 1699, § 13; Acts 1975, No. 130, § 1.)

§36-25-16. Reports by persons related to state officials or employees who represent persons before state agencies or who contract with state.

(a) When any citizen of the state or business with which he is associated represents for a fee any person before a state regulatory agency or commission or department of the executive branch, he

shall report to the state ethics commission the name of any adult child, parent, spouse, brother or sister who is an official or an employee of that state regulatory agency or commission or department of the executive branch.

(b) When any citizen of the state or business with which he is associated enters into a contract for the sale of goods or services to the state of Alabama or any of its agencies in amounts exceeding $1,000.00, he shall report to the state ethics commission the names of any adult child, parent, spouse, brother or sister, who is an official or employee of the agency or department with whom the contract is made. This section shall not apply to any contract for the sale of goods or services awarded through a process of public notice and competitive bidding.

(c) Each regulatory agency, commission or department of the executive branch or any agency of the state of Alabama shall be responsible for notifying citizens affected by this chapter of the requirements of this provision. (Acts 1973, No. 1956, p. 1699, § 15; Acts 1975, No. 130, § 1.)

§36-25-17. Reports of violations; cooperation of agency heads; preparation and publication of procedure for review and appeal.

(a) Every governmental agency head shall file reports with the commission on any matters that come to his attention which may constitute a violation of this chapter.

(b) Governmental agency heads shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted

by the commission.

(c) The commission shall prepare and publish, prior to the implementation of this chapter, procedures for review or appeal of any action taken against or in regard to any person covered in this chapter. (Acts 1973, No. 1056, p. 1699, § 16; Acts 1975, No. 130, § 1.)

§36-25-18. Registration of lobbyists required; filing of supplemental registration.

(a) Every person employed or retained as a lobbyist shall register by filing a form prescribed by the commission within five days after the first undertaking requiring registration.

(b) The registration shall be written, verified and shall contain, but not be limited to, the following information:

(1) The registrant's full name and address;

(2) The registrant's normal business and business address;

(3) The full name and address of the registrant's principal(s);

(4) A listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative or executive branch to influence legislation or executive action;

(5) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a categorical disclosure of the number of members of the group as follows: one through five; six through 10; 11 through 25; over 25;

(6) A statement signed by the principal(s) that he has or they have read the registration, know its contents and has

or have authorized the registrant to be a lobbyist in his or their behalf as specified therein and that no compensation will be paid to the registrant contingent upon passage or defeat of such measure(s).

(c) A registrant shall file a supplemental registration indicating any substantial change in the information contained in the prior registration within 10 days after the date of the change. (Acts 1973, No. 1056, p. 1699, § 19; Acts 1975, No. 130, § 1.)

§36-25-19. Monthly reports to be filed by lobbyists, etc., when legislature in session.

Every person registered under section 36-25-18 and every principal employing such lobbyist shall file with the commission a sworn statement concerning the activities set out in said section. The report must be filed between the first and fifteenth day of each month succeeding a month in which the legislature is in session covering the activities during the previous month. The report shall be written, verified and contain, but not be limited to, the following information:

(1) All amounts received or expended directly or indirectly for the purpose of carrying on lobbying activities in the following categories: Less than $1,000.00 $1,000.00 through $3,000.00; more than $3,000.00; but need not include amounts received by such lobbyist for his personal living expenses nor amounts received which are reportable as income to him for federal tax purposes unless his contract of employment provides that amounts received for such expenses or as such income may or shall be used for carrying on

lobbying activities;

(2) A detailed statement of any money loaned or promised to legislators or to anyone on their behalf;

(3) A statement detailing the extent of any direct business association or partnership with any current member of the legislature or public official or employee;

(4) A list of legislation by category supported or opposed by the registrant, by any person retained or employed by the registrant to appear on his behalf, or by any other person appearing on his behalf. (Acts 1973, No. 1056, p. 1699, § 20; Acts 1975, No. 130, § 1.)

§36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.

(a) A person who ceases to engage in activities requiring him to register under section 36-25-18 shall file a written, verified statement with the commission acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under sections 36-25-18 and 36-25-19 for any reporting period during which he was registered under this chapter. (Acts 1973, No. 1056, p. 1699, § 21; Acts 1975, No. 130, § 1.)

§36-25-21. Reports filed by lobbyists constitute public records; reports open to public inspection.

All reports filed under sections 36-25-18, 36-25-19 and 36-25-20 are public recorders and shall be made available for

public inspection during regular business hours. (Acts 1973, No. 1056, p. 1699, § 22; Acts 1975, No. 130, § 1.)

§36-25-22. Provisions of sections 36-25-18 through 36-25-21 not to be construed as affecting certain professional services.

The provisions of sections 36-25-18 through 36-25-21 shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation where such professional service is not otherwise connected with legislative action. (Acts 1973, No. 1056, p. 1699, § 24; Acts 1975, No. 130, p. 1.)

§36-25-23. Former members of legislature not to be extended floor privileges for lobbying purposes.

No former member of the house of representatives or the senate of the state of Alabama shall be extended floor privileges of either body in a lobbying capacity. (Acts 1973, NO. 1056, p. 1699, § 28; Acts 1975, No. 130, § 1.)

§36-25-24. Filing of complaints by citizens generally.

Any citizen wishing to file a complaint against any public official or employee covered by this chapter shall initially file said complaint with the commission. If the commission does not take proper action within 45 days, then the said citizen may file the said complaint with the attorney general or other officers

authorized to enforce this chapter. (Acts 1973, No. 1056, p. 1699, § 30; Acts 1975, No. 130, § 1.)

§36-25-25. Making false accusation.

(a) Any person who knowingly and intentionally files a false complaint with the commission, or any member of the commission who initiates action against any state official, state employee or any other person covered by this chapter, knowing such complaint to be false or inaccurate, shall be guilty of the crime of malicious prosecution.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of malicious prosecution, in addition to any other punishment prescribed by law therefor, shall also be required by court order to reimburse the person against whom the false complaint was filed for all of his legal expenses and any other expenses incurred in relation to the accused defending himself against the false complaint. If such complaint is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the state.

(c) If any person, accused of violating this chapter, is acquitted upon trial, then such person may, in the discretion of the court or jury, recover in a civil action from the person who brought the charge against him a sum equal to three times the damages thereby caused. (Acts 1973, No. 1056, p. 1699, § 27; Acts 1975, No. 130, § 1.)

§36-25-26. Making of false statements, etc., for purpose of influencing legislation.

No person, for the purpose of influencing legislation, may

(1) Knowingly or willfully make any false statement or misrepresentation of the facts to a member of the legislative or executive branch; or

(2) Knowing a document to contain a false statement, cause a copy of the document to be received by a member of the legislative or executive branch without notifying such member in writing of the truth. (Acts 1973, No. 1056, p. 1699, § 23; Acts 1975, No. 130, § 1.)

§36-25-27. Penalties for violations of provisions of chapter; prosecution, jurisdiction and venue of actions for violations of chapter, etc.; provisions of chapter not to limit powers of legislature, agencies or commissions to discipline or impeach members, officials or employees nor repeal any provisions of criminal laws.

(a) Any person who violates any provision of this chapter and is found guilty shall be fined not more than $10,000.00 or shall be imprisoned for not more than 10 years or both.

(b) All prosecutions for violations of the provisions of this chapter shall be initiated and prosecuted by the attorney general of the state or by the district attorney having jurisdiction of the offense.

(c) The penalties prescribed in this chapter do not limit the power of either house of the legislature to discipline its

own members or to impeach public officials and do not limit the powers of agencies or commissions to discipline their respective officials or employees.

(d) The circuit court of this state shall have jurisdiction of all cases and actions relative to violations or the enforcement of this chapter, and the venue of any action under this chapter shall be in the country of the residence of the defendant.

(e) Nothing in this chapter is intended to nor is to be construed as repealing in any way the provisions of any of the criminal laws of this state. (Acts 1973, No. 1056, p. 1699, § 26; Acts 1975, No. 130, § 1.)

§36-25-28. Constitutional reights of citizens to communicate with members of legislature not to be impaired by chapter.

Nothing in the provisions of this chapter shall be construed as to deprive any citizen not lobbying for hire of his constitutional right to communicate with members of the legislature. (Acts 1973, No. 1056, p. 1699, § 25; Acts 1975, No. 130, § 1.)

§36-25-29. Appropriations.

The legislature shall appropriate such sums as it deems necessary to implement the provisions of this chapter. (Acts 1973, No. 1056, p. 1699; § 29; Acts 1975, No. 130, § 1.)

§36-25-30. Construction of chapter; repeal of conflicting laws.

This chapter shall be construed in pari materia with other laws dealing with the

subject matter hereof, and repeals all laws and parts of laws in conflict herewith. (Acts 1973, No. 1056, p. 1699, § 32; Acts 1975, No. 130, § 1.)

Supreme Court, U. S.
FILED
AUG 27 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-2074

MELBA TILL ALLEN,

PETITIONER,

VS.

STATE OF ALABAMA,

RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLES A. GRADDICK
Attorney General
250 Administrative Bldg.
Montgomery, AL 36130

WALTER S. TURNER
Chief Assistant Atty. Gen.
250 Administrative Bldg.
Montgomery, AL 36130

JAMES F. HAMPTON
Special Assistant Atty. Gen.
567 South Hull Street
Montgomery, AL 36104

Counsel for Respondent

INDEX

Citations ii

Statement of the Case 1

Argument in Opposition to the Granting of the Writ 2

Conclusion. 5

Certificate of Service 7

CITATIONS

Boddie v. Connecticut,
401 U.S. 371, 28 L.Ed. 2d 113,
91 S. Ct. 780 (1977). 4

Giaccio v. Pennsylvania,
382 U.S. 399, 15 L.Ed. 2d 447,
86 S. Ct. 518 (1966). 4

Service v. Dulles,
354 U.S. 363, 1 L. Ed. 2d 1403
77 S. Ct. 1152 (1957) 3

Vitarelli v. Scaton,
359 U.S. 535, 3 L.Ed. 1012,
79 S. Ct. 968 (1959). 3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

NO. 79-2074

MELBA TILL ALLEN,
PETITIONER
VS.
STATE OF ALABAMA,
RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Comes now the State of Alabama by and through the Attorney General of Alabama and respectfully asserts that the Petition for Writ of Certiorari is due to be dismissed and that this matter should not be reviewed by this Honorable Court.

STATEMENT OF THE CASE

This case arose from the Circuit Court of Montgomery County, Alabama after the Petitioner was convicted therein for a violation of Act No. 130 of the Alabama Legislature,

Regular Session, 1975, hereafter ethics act. (A photocopy of certain pertinent statutes including this act are included with the petition and brief of Mrs. Allen) The Petitioner was sentenced to the penitentiary for a term of one year.

The appeal of that conviction resulted in an affirmance by the Alabama Court of Criminal Appeals in an opinion issued December 18, 1979. Application for rehearing was made by the Appellant and was overruled without opinion on January 22, 1980. A Petition for Writ of Certiorari was filed in the Alabama Supreme Court which was denied without opinion, on March 28, 1980.

The Petitioner filed an Application for stay of sentence pending the present petition in this Honorable Court.

ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT

1. The decision and rulings by the Alabama Courts concerning the Petitioner's rights to due process in regard to her trial and conviction under the ethics act were in

> complete accord with the decisions of this Honorable Court. There is no showing that any violation of constitutional rights occurred by the trial and conviction under this act.

The Petitioner's first reason as to why this writ should be granted deals with a question of whether an Alabama Statute was properly applied to Petitioner's case. Further, the Petitioner's "due process" argument consists of allegations of fact in regard to whether the Alabama Ethics Commission was required to give Mrs. Allen a hearing before charges could have been brought. These state law questions were decided by the Alabama Courts and those decisions were in conformity with the decisions of this Honorable Court.

The Petitioner has cited two cases which she contends are in conflict with the Alabama decision in her case. However, a reading of Vitarelli v. Scaton, 359 U.S. 535, 3 L. Ed. 1012, 79 S. Ct. 968 (1959) and Service v. Dulles, 354 U.S. 363, 1 L. Ed. 2d 1403, 77 S. Ct. 1152 (1957)

will reveal that those decisions are so varied from the issues at bar that they don't merit consideration. Obviously they don't show a conflict sufficient (if any at all) to warrant relief.

The Petitioner also cites Boddie v. Connecticut, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971) and Giaccio v. Pennsylvania, 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518 (1966) in order to define due process. The Respondent has no quarrel with that definition and only adds that those protections were afforded to this Petitioner.

The Petition now before the Court has only alleged that the decision by the Alabama Courts was in conflict with prior decisions of this Court. The Respondent's opposition to that allegation is discussed above. The Respondent would further offer, as follows, other reasons as to why the writ should not be granted.

Initially, the Respondent would submit that the issue now before the Court is one of little significance or importance as far as practical impact on future litigation.

Without a doubt this issue is one which turns on its own particular fact situation and is one which few if any other persons will be affected thereby. By the Petitioner's brief itself it can be seen that the issue raised is based solely upon whether Mrs. Allen was given an adequate hearing under State law. This question is one which can turn only upon those peculiar facts of the case at bar. This ground alone is sufficient reason for this Honorable Court to find that the case at bar is not of importance sufficient to grant the writ.

CONCLUSION

Based on the above showing that the holding by the Alabama Courts in this cause is not in conflict with the decisions of this Honorable Court it is respectfully urged that the Petition for Writ of Certiorari is due to be denied.

Respectfully submitted,

CHARLES A. GRADDICK
Attorney General
State of Alabama

WALTER S. TURNER
Chief Assistant Attorney General

JAMES F. HAMTPON
Special Assistant Attorney General

COUNSEL FOR RESPONDENT

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979
NO. 79-2074
MELBA TILL ALLEN,
Petitioner
v.
STATE OF ALABAMA,
Respondent
BRIEF IN OPPOSITION TO
WRIT OF CERTIORARI

AFFIDAVIT OF PROOF OF SERVICE

State of Alabama Montgomery County

I, the undersigned, Assistant Attorney General of Alabama, 64 North Union, Montomery, Alabama 36130, hereby certify that I have deposited for service three (3) printed copies of a brief in opposition to the Writ of Certiorari to the Honorable Richard D. Horne, 301 St. Joseph Street, P.O. Box 1706, Mobile, Alabama 36601, and forty (40) printed copies to the Clerk of the Supreme Court of the United States.

Done, this the _____day of August 1980.

WALTER S. TURNER
Chief Assistant Atty. Gen.

Sworn to and subscribed before me the undersigned, this the _____ day of August, 1980.

_____

NOTARY PUBLIC

see 79
2035